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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emission Standards into Procurement Policies.

Rulemaking 06-04-009  
(Filed April 13, 2006)

**ADMINISTRATIVE LAW JUDGES' RULING  
FINDING THE COMMUNITY ENVIRONMENTAL COUNCIL, UNION OF  
CONCERNED SCIENTISTS, AND NATURAL RESOURCES DEFENSE  
COUNCIL ELIGIBLE TO CLAIM INTERVENOR COMPENSATION**

**1. Summary**

This ruling finds the Community Environmental Council (CE Council) eligible to claim compensation in Phase 1 and Phase 2 of Rulemaking (R.) 06-04-009 pursuant to Sections (§§) 1801-1804 of the California Public Utilities Code,<sup>1</sup> which guide the Commission's intervenor compensation program. It finds the Union of Concerned Scientists (UCS) and the Natural Resources Defense Council (NRDC) eligible to claim compensation in Phase 2 of this proceeding.

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<sup>1</sup> All statutory references in this ruling are to the California Public Utilities Code.

## **2. Timeliness of the Notices of Intent to Claim Compensation**

Section 1804(a)(1) requires a customer who intends to seek a compensation award to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference (PHC), with certain exceptions.

The PHC in Phase 1 of the proceeding was held on May 10, 2006. The PHC on Phase 2 issues was held on November 28, 2006. On December 20, 2006, CE Council filed its NOI seeking a determination of its eligibility for compensation in connection with its work in Phase 1 and Phase 2 of this proceeding. This NOI is timely for work conducted in Phase 2, but does not meet the 30-day filing requirement for Phase 1.

Section 1804(a)(1) allows the Commission to accept new NOIs in cases where the schedule would not reasonably allow parties to identify issues within the 30-day timeframe, or where new issues emerge subsequent to the time set for filing. CE Council filed a motion for party status on October 11, 2006, which was granted by an Administrative Law Judge's (ALJ) ruling dated October 24, 2006. In its NOI, CE Council describes that it became involved late in Phase 1 due to passage of Assembly Bill (AB) 32 and Senate Bill 1368, and because of new information it obtained regarding greenhouse gas (GHG) emissions from liquefied natural gas imports. CE Council has explained adequately the timing of its NOI, and we accept the NOI.

UCS and NRDC filed their NOIs on December 28, 2006. While UCS and NRDC participated in Phase 1 of this proceeding, UCS and NRDC describe only their planned participation in Phase 2 as the basis for their NOIs. As a result, we interpret these NOIs as applicable only to Phase 2. The UCS and NRDC's NOIs are timely for work expected to be conducted in Phase 2.

### **3. Customer Status**

Section 1802(b) anticipates that this ruling will determine whether the intervenor is a customer for purposes of the intervenor's eligibility to claim intervenor compensation in the Commission proceedings.

Each of UCS, NRDC, and CE Council is a "customer" as defined in § 1802(b)(1)(C) because each is an organization authorized to represent the interests of its members, many of whom are residential customers.

### **4. Significant Financial Hardship**

Only those customers for whom participation would impose a significant financial hardship may receive intervenor compensation.

Section 1802(g) defines "significant financial hardship" as the inability of the customer to "afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation." In the case of a group or organization, the "significant financial hardship" standard is met when "the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding."

Section 1804(a)(2)(B) provides that a notice of intent may include a showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included in the request for intervenor compensation.

Each of UCS, NRDC, and CE Council asserts significant financial hardship in its Notice of Intent. We determine whether each intervenor meets the "significant financial hardship" standard for its specified participation in this proceeding.

#### **4.1 UCS**

UCS states the Commission recently determined that it would experience significant financial hardship if it were to participate in a Commission proceeding. The Commission granted UCS a finding of significant financial hardship in Decision (D.) 06-04-022 rendered on April 13, 2006. That finding creates a rebuttable presumption in this proceeding pursuant to § 1804(b)(1), which states in part:

A finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other commission proceedings commencing within one year of the date of that finding.

Because this proceeding commenced within a year of the date of that finding, we extend the finding of significant financial hardship to this proceeding.

#### **4.2 NRDC**

NRDC states the Commission recently determined that it would experience significant financial hardship if it were to participate in a Commission proceeding. On November 10, 2006, an ALJ ruling in Application (A.) 05-06-004 granted NRDC a finding of significant financial hardship. Because this proceeding commenced within one year of the date of that finding, we extend the finding of significant financial hardship to this proceeding, consistent with § 1804(b)(1).

#### **4.3 CE Council**

CE Council refers to the finding of significant financial hardship in an ALJ ruling dated June 26, 2006 in R.06-04-010. Pursuant to § 1804(b)(1), that ruling creates a rebuttable presumption of eligibility for compensation for CE Council

and we extend the finding of significant financial hardship for CE Council to this proceeding.

## **5. Nature and Extent of Participation and Itemized Estimate of the Compensation**

Section 1804(a)(2)(A)(i) requires a NOI to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted when the NOI is filed. Section 1804(a)(2)(A)(ii) also requires that an intervenor include in its NOI an itemized estimate of the compensation that the customer expects to request.

### **5.1 Purposes of this Rulemaking**

This rulemaking consists of two phases. Phase 1 addressed a GHG performance standard for new generation and long-term procurement contracts undertaken by electric utilities and other load-serving entities. Phase 2 will address the implementation issues associated with the load-based GHG emissions cap adopted in D.06-02-032 as part of the Commission's Procurement Incentive Framework. Phase 2 also will develop guidelines that the California Air Resources Board can consider as it develops a GHG emissions cap for the California economy, as directed by AB 32.

### **5.2 UCS Planned Participation**

UCS states that its goals are to build a cleaner, healthier environment, and that its "Clean Energy Program" includes research and advocacy on renewable energy standards, the impact of energy production on human health and the environment, and nuclear safety. UCS states that in accordance with these goals it intends to participate in all Phase 2 issues as outlined in the Order Instituting Rulemaking and in the ALJ ruling of November 1, 2006.

In its email of February 21, 2007, UCS provides the following list of Phase 2 issues in which it plans to participate:

1. Reporting requirements,
2. Development of 1990 electricity sector baseline and current entity-specific GHG emissions levels,
3. GHG emissions reduction measures and annual emissions caps,
4. Flexible compliance mechanisms,
5. Entity-specific allowance allocation, and
6. Modeling to support policy design and evaluation of costs.

UCS notes, however, that its participation in the issues of reporting requirements and of development of 1990 electricity sector baseline and current entity-specific GHG emissions levels (Numbers 1 and 2 on the list above) likely will be minimal and that it will engage more actively in the remaining issues on this list. UCS also indicates that its participation may be narrowed as appropriate to minimize duplication with other parties.

UCS anticipates that it will participate in workshops and discovery, will submit briefs and comments, and, if evidentiary hearings are held, may sponsor expert testimony and conduct cross-examination. UCS states that, if it deems it necessary to participate in evidentiary hearings, it may need to amend its NOI to cover the substantial costs of participation in those hearings.

UCS provides an estimate of the following expenses:

<b>Description</b>	<b>Amount</b>
<u>UCS Staff:</u>	
Alan Noguee, Program Director, 30 hours @ \$232/hour	\$ 6,960

John Galloway, Senior Energy Analyst, 200 hours @ \$160/hour	\$ 32,000
Cliff Chen, 150 hours @ \$125/hour	\$ 18,750
<u>Consulting Staff:</u>	
Clyde Murley, Policy Advocate/ Analyst, 80 hours @ \$230/hour	\$ 18,400
<u>Expert Witness:</u>	
Technical consultant and expert witness, 180 hrs @ \$200/hour	\$ 36,000
<u>Travel and Compensation Request Preparation:</u>	
Alan Noguee, Program Director, UCS, 5 hours @ \$116/hour	\$ 580
John Galloway, Senior Energy Analyst, 40 hours @ \$80/hour	\$ 3,200
Cliff Chen, 30 hours @ \$62.50/hour	\$ 1,875
Clyde Murley, Policy Advocate/ Analyst, 20 hours @ \$115/hour	\$ 2,300
Technical Consultant and Expert Witness, 15 hours @ \$100/hour	\$ 1,500
<u>Other costs:</u>	
Non-staff travel costs, postage, copies, etc.	\$ 1,500
<b>TOTAL</b>	<b>\$123,065</b>

Although the UCS Notice of Intent fails to indicate the type of work to be undertaken by Cliff Chen, UCS, in general, satisfactorily presents an itemized estimate of the compensation it expects to request.

UCS must provide far more specific data for its consultant costs when UCS ultimately seeks compensation and must fully support its request for compensation, including the reasonableness of the hours spent and hourly rates. Like all intervenors, UCS must demonstrate that its participation resulted in a substantial contribution to a Commission decision issued in this proceeding.

### **5.3 NRDC Planned Participation**

NRDC emphasizes in its NOI that the interests of the customers it represents are unique and are not adequately represented by other parties. NRDC plans to focus on the need to preserve environmental quality while minimizing the societal costs of providing electric service through energy efficiency, renewable resources, and other cost-effective alternative energy resources.

In its e-mail of March 1, 2007, NRDC provides the following list of the Phase 2 issues in which NRDC plans to actively participate:

1. Reporting requirements,
2. Development of 1990 electricity sector baseline and current entity-specific GHG emissions levels,
3. GHG emissions reduction measures and annual emissions caps,
4. Flexible compliance mechanisms,
5. Entity-specific allowance allocation, and
6. Modeling to support policy design and evaluation of costs.

NRDC states that it plans to participate in all these areas, but that it is also in the process of coordinating with other parties with similar interests to minimize duplication, and thus NRDC's actual participation in some of these issues may be narrowed due to that coordination.

NRDC states that it will submit briefs and comments, present testimony and witnesses, and participate in any workshops or hearings. NRDC reports that, to the extent possible, it will coordinate its participation with other parties to avoid duplication.



NRDC provides the following estimates of its costs:

<b>Description</b>	<b>Amount</b>
Audrey Chang, scientist, 200 hours @ \$110/hour	\$ 22,000
Devra Wang, scientist, 100 hours @ \$130/hour	\$ 13,000
Sheryl Carter, scientist, 50 hours @ \$175/hour	\$ 8,750
Other costs (postage, copies, travel, etc.)	\$ 2,500
<b>TOTAL</b>	<b>\$ 46,250</b>

NRDC satisfactorily presents an itemized estimate of its budget.

If it ultimately seeks compensation, NRDC must describe its costs more precisely and must justify the reasonableness of the hours and rates it claims. It must also demonstrate that its participation contributed substantially to the Commission's decision.

#### **5.4 CE Council Planned Participation**

CE Council states it will be the only intervenor representing solely the interests of residential and small commercial electricity and natural gas customers in the Central Coast region of California. CE Council emphasizes its interest in ensuring the creation of state policies that further CE Council's regional renewable energy goals.

CE Council states that, in Phase 1, it commented on certain issues related to the Emissions Performance Standard and on legal issues outlined in the amended scoping memo for Phase 1. CE Council describes that it plans to address many Phase 2 issues, including lifecycle GHG emissions associated with various energy resources and the impact of community choice aggregation on issues related to the proceeding.

CE Council states that, to the extent that other intervenors seek to represent similar customer interests, it will coordinate its efforts with such parties to avoid duplication.

CE Council provides the following itemized estimate of the costs of its participation in the proceeding:

<b>Description</b>	<b>Amount</b>
Tam Hunt, Energy Program Director/ Attorney, 200 hours @ \$260/hour	\$ 52,000
Consultant Attorney, 40 hours @ \$250/hour	\$ 10,000
Expert witness, 80 hours @ \$150/hour	\$ 12,000
Other costs: 8 trips, including lodging, @ \$800/trip	\$ 6,400
<b>TOTAL</b>	<b>\$ 80,400</b>

CE Council presents a satisfactory estimate of the compensation it expects to request. Its request for compensation, however, must contain more precise information about costs and rates. The work for which it seeks compensation must result in a substantial contribution to a Commission decision issued in this proceeding. The Phase 2 scoping memo excluded the issue of lifecycle analysis of GHG emissions from the scope of Phase 2.<sup>2</sup> We remind CE Council that work performed on issues that are not within the scope of the proceeding will not be compensated.

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<sup>2</sup> Assigned Commissioner's Ruling and Phase 2 Scoping Memo, February 2, 2007, at 14.

## **6. Duplication of Effort**

The Commission welcomes and encourages the participation of the CE Council, NRDC, and UCS in this proceeding and hopes to rely on their expertise and insight in reaching well-reasoned decisions. We take this opportunity, however, to remind these parties that the Commission does not award compensation for unnecessarily duplicative work. Because these three groups appear to share common constituencies and expertise, we expect them to coordinate their work closely and, in their requests for compensation, to distinguish their contributions from those of other parties. Any party who seeks additional guidance should contact the Commission's Public Advisor.

Therefore, **IT IS RULED** that:

1. Union of Concerned Scientists (UCS) and Natural Resources Defense Council (NRDC) are customers for purposes of the Commission's intervenor compensation program, as that term is defined in § 1802(b)(1), and have otherwise met the eligibility requirements of § 1804(a) for Phase 2 of this proceeding.
2. Community Environmental Council (CE Council) is a customer for purposes of the Commission's intervenor compensation program, as that term is defined in § 1802(b)(1), and has otherwise met the eligibility requirements of § 1804(a) for Phase 1 and Phase 2 of this proceeding.
3. UCS, NRDC, and CE Council have each established by rebuttable presumption that its participation in this proceeding will create significant financial hardship.
4. Work on issues that are not within the scope of this proceeding will not be compensated.
5. Intervenors should avoid unnecessary duplication of effort

Dated April 6, 2007, at San Francisco, California.

/s/ MEG GOTTSTEIN/CFT

Meg Gottstein  
Administrative Law Judge

/s/ CHARLOTTE F. TERKEURST

Charlotte F. TerKeurst  
Administrative Law Judge

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the Notice of Availability is current as of today's date.

Dated April 6, 2007, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid